IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.6515 OF 2006

Hindurao Ganpati Mandhare .. Petitioner.
Vs.
Mahadeo Vitthal Mandhare & Ors. .. Respondents.

Mr.A.V.Anturkar i/b Shri Sugandh B.Deshmukh for the petitioner.

CORAM : D.B.BHOSALE, J.

DATED : 4TH OCTOBER, 2006

P.C.:

. Heard learned counsel for the petitioner.

2. This petition is directed against the order dated 16.8.2006 by which the application filed by the petitioner seeking stay of the appeal, pending hearing and final disposal of writ petition no.1195 of 1995, has been rejected. The order impugned in the present writ petition reads thus:

> "1. Read application and say given by the Respondent on the same application. Heard Learned Counsel for the appellant and Respondent. Perused the record. It appears that Plaintiff/Respondent had filed suit R.C.S.No.198/89 for perpetual injunction against the defendant/Appellant. Said suit is decided on 25.3.1998. Present appeal is filed by the original defendant no.1 challenging judgment and decree passed in R.C.S.No.198/1989. According to appellant defendant nos.1, 2 i.e. appellants claim their tenancy right over the suit land and the said proceedings decided against defendant nos.1 and 2. Writ petition is pending before Honourable High Court and requested to stay appeal till decision of Writ Petition. According to Appellant, Writ Petition is filed

> in the year 1995 and the present suit is decided in the year 1998 during pendency of this Writ Petition. Present suit is for simpliciter perpetual injunction and issues about tenancy has not been framed in this suit and not referred to competent Authority. Tenancy proceeding is separately initiated by the party. Therefore fate of this present suit is not depend upon the decision of the Writ Petition. Therefore, I do not find any reason to stay present appeal and I do not find any substance in the Application. Hence the order."

3. On perusal of the order it is clear that the instant proceedings arise from the suit for injunction simpliciter whereas the issue involved in the writ petition is that of tenancy. Even if it is assumed that the petitioner is a tenant in the suit land it does not necessarily mean that he should be in possession and that injunction granted was illegal. Mr.Anturkar, learned counsel for the petitioner submits that the petitioner is in possession of the suit properties. I do not wish to express any opinion since that is not the subject matter of the writ petition. Keeping in view the order impugned in the present writ petition and considering that instant proceedings is filed only for perpetual injunction I am not inclined to interfere with the impugned order in writ jurisdiction under Article 227 of the Constitution of India. Hence the writ petition is dismissed.

(D.B.Bhosale, J.)